



House of Representatives

General Assembly

File No. 451

February Session, 2000

Substitute House Bill No. 5700

House of Representatives, April 5, 2000

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning Costs Of Incarceration.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (a) In the case of causes of action of any person
- 2 obligated to pay the costs of such person's incarceration under section
- 3 18-85a of the general statutes and regulations adopted in accordance
- 4 with said section, the claim of the state shall be a lien against the
- 5 proceeds therefrom in the amount of the costs of incarceration or fifty
- 6 per cent of the proceeds received by such person after payment of all
- 7 expenses connected with the cause of action, whichever is less, for
- 8 repayment under said section, and shall have priority over all other
- 9 claims including any lien of the state for repayment of public
- 10 assistance except (1) attorney's fees for said causes, (2) expenses of suit,
- 11 (3) costs of hospitalization connected with the cause of action by
- 12 whomever paid over and above hospital insurance or other such
- 13 benefits, and, for such period of hospitalization as was not paid for by
- 14 the state, physicians' fees for services during any such period as are
- 15 connected with the cause of action over and above medical insurance

16 or other such benefits, (4) restitution or payment of compensation to a
17 crime victim ordered by a court of competent jurisdiction, and (5)
18 payment of a civil judgment rendered in favor of a crime victim by a
19 court of competent jurisdiction; and such claim shall consist of the total
20 amount of the costs of incarceration under section 18-85a of the general
21 statutes. The proceeds of such causes of action shall be assignable to
22 the state for payment of the amount due under section 18-85a of the
23 general statutes, irrespective of any other provision of law. The state's
24 lien shall constitute an irrevocable direction to the attorney for the
25 inmate to pay the Commissioner of Correction or the commissioner's
26 designee in accordance with its terms, except if, after written notice
27 from the attorney for the inmate informing the commissioner or the
28 commissioner's designee of the settlement of the cause of action or
29 judgment thereon and requesting the amount of the lien to be paid to
30 the commissioner or the commissioner's designee, the commissioner or
31 the commissioner's designee does not inform such attorney of the
32 amount of the state's lien within forty-five days of receipt of the
33 written request of such attorney for such information, such attorney
34 may distribute such proceeds to such inmate and shall not be liable for
35 any loss the state may sustain thereby.

36 (b) In the case of an inheritance of an estate by any person who is
37 obligated to pay the costs of such person's incarceration in accordance
38 with section 18-85a of the general statutes and the regulations adopted
39 under said section, the claim of the state shall be a lien against such
40 inheritance in the amount of the costs of incarceration or fifty per cent
41 of the assets of the estate payable to the inmate, whichever is less. The
42 Court of Probate shall accept any such lien notice filed by the
43 commissioner or the commissioner's designee with the court prior to
44 the distribution of such inheritance, and to the extent of such
45 inheritance not already distributed, the court shall order distribution in
46 accordance therewith.

47 Sec. 2. (NEW) Upon the death of any person obligated to pay the

48 costs of such person's incarceration under section 18-85a of the general
49 statutes and regulations adopted in accordance with said section, the
50 state shall have a claim against such person's estate for all costs of
51 incarceration under the provisions of said section and regulations for
52 which the state has not been reimbursed, to the extent that the amount
53 which the surviving spouse, parent or dependent children of the
54 decedent would otherwise take from such estate is not needed for their
55 support. Such claims shall have priority over all other unsecured
56 claims against such estate, including any lien of the state for
57 repayment of public assistance, except (1) expenses of last sickness not
58 to exceed three hundred seventy-five dollars, (2) funeral and burial
59 expenses in accordance with that allowed under section 17b-84 of the
60 general statutes upon the death of a beneficiary of aid, (3) restitution or
61 payment of compensation to a crime victim ordered by a court of
62 competent jurisdiction, (4) payment of a civil judgment rendered in
63 favor of a crime victim by a court of competent jurisdiction, and (5)
64 administrative expenses, including probate fees and taxes, and
65 including fiduciary fees not exceeding the following commissions on
66 the value of the whole estates accounted for by such fiduciaries: On the
67 first two thousand dollars or portion thereof, five per cent; on the next
68 eight thousand dollars or portion thereof, four per cent; on the excess
69 over ten thousand dollars, three per cent. Upon petition by any
70 fiduciary, the Probate Court, after a hearing thereon, may authorize
71 compensation in excess of the above schedule for extraordinary
72 services. Notice of any such petition and hearing shall be given to the
73 Commissioner of Correction at least ten days in advance of such
74 hearing. The allowable funeral and burial payment authorized by this
75 section shall be reduced by the amount of any prepaid funeral
76 arrangement. Any amount paid from the estate under this section to
77 any person that exceeds the limits provided in this section shall be
78 repaid to the estate by such person, and such amount may be
79 recovered in a civil action with interest at the legal rate from the date
80 of demand.

81 Sec. 3. This act shall take effect from its passage.

JUD Committee Vote: Yea 40 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Indeterminate Revenue Gain

Affected Agencies: Departments of Correction and Administrative Services, Office of the Attorney General, Probate Court (Judicial Department)

Municipal Impact: None

Explanation**State Impact:**

Passage of the bill will result in a potential revenue gain. The bill provides that the state may collect money owed by an inmate for incarceration costs from an estate after his death or from money or property the inmate obtains through a lawsuit or inheritance. The bill further indicates that an incarceration lien would take priority over any public assistance lien. The impact of the incarceration lien taking priority is uncertain. Finally, the number of inmates who would be subject to the provisions of this bill and the amount of potential revenue is indeterminate at this time. Similarly, any potential workload increase for the Department of Administrative Services and the Attorney General is also indeterminate.

Under C.G.S. 18-85a, the Department of Correction (DOC) can assess inmates of correctional facilities for the costs of their

incarceration. Furthermore, under C.G.S. 18-101, DOC collects all inmate compensation and disburses these funds according to a priority list that includes taxes, payment to victims, dependent support, travel and incidental expenses, and board costs.

Currently, DOC charges inmates for the costs of certain services and programs such as sick calls, dental procedures, eyeglasses, elective and vocational educational programs, extended family visits, and lab tests to detect illegal drugs. These charges amounted to revenue of approximately \$100,000 in FY 1999 and it is not projected that in FY 2000 there will be any significant increase.

The annual cost to incarcerate an individual is approximately \$25,000. Cost per day reaches as high as \$160 at the state's maximum-security facility and \$80 - 90 at the state's female and youth facilities. The average incarceration cost per day is approximately \$69. DOC's total estimated expenditure amount for FY 99 is \$480 million. None of these figures include costs associated with fringe benefits or bond interest.

OLR Bill Analysis

sHB 5700

AN ACT CONCERNING COSTS OF INCARCERATION.**SUMMARY:**

This bill allows the state to collect money owed by an inmate for the cost of his incarceration from his estate after his death or from money or property the inmate obtains through a lawsuit or inheritance. The bill makes the state's claim a lien against lawsuit or inheritance money or property, gives this lien priority (with certain exceptions), and allows the state to collect up to the total cost of the incarceration or 50% of the property or money obtained. Regarding a deceased person's estate, the state's claim has priority over unsecured claims except for court ordered restitution or compensation to a crime victim, payment of a civil judgment to a crime victim, and certain expenses.

EFFECTIVE DATE: Upon passage.

LAWSUIT PROCEEDS

Under the bill, whenever a person who owes the state money for the costs of his incarceration wins a lawsuit judgment, the state's claim is a lien against the proceeds. The maximum amount of the claim is the full cost of the inmate's incarceration or 50% of the proceeds, minus certain expenses, whichever is less.

The incarceration lien has priority over all other claims, including any state lien for repayment of public assistance, except for (1) expenses of the lawsuit, including attorney's fees; (2) cost of hospitalization or physicians' fees not paid by insurance or other benefits and connected with the lawsuit; (3) court ordered restitution or compensation to a crime victim; or (4) payment of a civil judgment to a crime victim.

The bill makes the proceeds assignable to the state, and the lien requires the inmate's attorney to pay the Department of Correction (DOC) commissioner from the proceeds. But, if the attorney gives the

commissioner written notice of a settlement or judgment and the commissioner does not respond within 45 days with the lien amount, the attorney can distribute the proceeds to the inmate and is not liable to the state.

INHERITANCE

When an inmate inherits property or money, his obligation is for the total cost of his incarceration or 50% of the inheritance, whichever is less. There is no reduction in this amount. The bill directs the probate court to accept any lien notice filed by the DOC commissioner or his designee and, to the extent the estate has not already been paid out, order the estate distributed accordingly.

DEATH OF PERSON OWING COSTS OF INCARCERATION

Under the bill, when someone dies who owes the state money for the cost of his incarceration, the state has a lien against his estate. The amount of the lien is up to the total cost of his incarceration to the extent the estate is not needed for the support of his surviving spouse, parent, or dependent children. The bill gives the lien priority over all other unsecured claims, including public assistance liens, except for (1) up to \$375 for the expenses of his last sickness; (2) up to \$1,200 for funeral and burial expenses; (3) court ordered restitution or compensation to a crime victim; (4) payment of a civil judgment to a crime victim; and (5) administrative expenses, including probate taxes and fees and fiduciary fees up to certain limits. If the person has a prepaid funeral arrangement, the funeral and burial amount must be reduced by the amount of the arrangement.

The bill limits fiduciary fees, based on the value of the estate, to 5% for the first \$2,000; 4% for the next \$8,000; and 3% for the remainder. The bill authorizes the probate court, after a hearing with a 10-day notice, to authorize payment above these levels for extraordinary services.

If any amount exceeding these limits has been paid from the estate, the bill requires the person who received it to repay the estate and allows the state to recover the amount, with interest at the legal rate (8%), by civil suit.

BACKGROUND***Inmate Liability for Costs of Incarceration***

By statute, the DOC commissioner must adopt regulations concerning assessing inmates for the costs of their incarceration. The regulations define the per-inmate, per-day cost of incarceration at DOC facilities to be the amount computed using the same accounting procedures the comptroller uses to calculate such costs for state humane institutions. The regulations also make inmates responsible for the costs of certain services and programs such as sick calls; dental procedures; eyeglasses; elective and vocational educational programs; extended family visits; and lab tests to detect illegal drugs, if the results are positive.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0